AGREEMENT

BETWEEN THE STATE OF KUWAIT

AND

THE REPUBLIC OF CROATIA

FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The State of Kuwait and the Republic of Croatia, (hereinafter referred to as the 'Contracting States');

Desiring to create favourable conditions for the development of the economic cooperation between them and in particular for investments by investors of one Contracting State in the territory of the other Contracting State;

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of business initiative and to the increase of prosperity in both Contracting States;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement and unless the context otherwise requires:

1. The term 'investment' shall mean every kind of asset, owned or controlled directly or indirectly by an investor of one Contracting State and invested in the territory of the other Contracting State in accordance with the laws and regulations of that Contracting State. This term shall include in particular, though not exclusively:

(a) tangible, intangible, movable and immovable property and any property rights such as leases, mortgages, liens, pledges, usufructs and other similar rights;

(b) a company or business enterprise, or shares, stocks, and other forms of equity participation, and bonds, debentures, and other forms of debt interests in a company or business enterprise, and other debts and loans and securities issued by any investor of a Contracting State, and returns retained for the purpose of re-investment;

(c) claims to money and claims to any other assets or performance pursuant to contract having an economic value and associated with an investment;

(d) intellectual and industrial property rights, including, but not limited to, copyrights, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;

(e) any right conferred by law, contract or by virtue of any licences or permits granted pursuant to law, including rights to prospect, explore, extract, or utilize natural resources, and rights to manufacture, use and sell products, and rights to undertake other economic and commercial activities and services.

Any change of the form in which assets are invested or reinvested does not affect their character as investment.

2. The term 'investor' shall mean:

(a) with respect to a Contracting State

(1) a natural person holding the nationality of that Contracting State in accordance with its applicable law; and

(2) the Government of that Contracting State and any juridical person or other entity legally constituted under the laws and regulations of that Contracting State, such as institutions, development funds, authorities,

foundations, establishments, agencies, enterprises, cooperatives, partnerships, corporations, companies, firms, organizations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise; and any entity established outside the jurisdiction of a Contracting State as a juridical person and in which such Contracting State or any of its nationals or any entity established within its jurisdiction has a predominant interest.

(b) with respect to a "third state", a natural person, a legal entity or other organization which fulfills, *mutatis mutandis*, the conditions specified in sub-paragraph (a) for a Contracting State.

3. The term 'own' or 'control' shall mean to include ownership or control exercised through subsidiaries or affiliates wherever located.

4. The term 'returns' shall mean amounts yielded by an investment, irrespective of the form in which they are paid, and in particular, though not exclusively, include profits, interest, capital gains, dividends, royalty payments, management, technical assistance or other fees, and payments in kind, such as in the form of goods or services.

5. The term 'territory' shall mean the territory of a Contracting State recognized by international law including any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of a Contracting State as an area over which a Contracting State may exercise sovereign rights or jurisdiction.

6. The term 'associated activities' shall mean activities connected with an investment and shall include without limitation, such activities as:

(a) the establishment, control and maintenance of branches, agencies, offices or other facilities for the conduct of business;

(b) the organization of companies, the acquisition of companies or interests in companies or in their property, the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposal of companies organized or acquired;

(c) the making, performance and enforcement of contracts related to investments;

(d) the acquisition, ownership, use and disposal by any legal means of property of all kinds, including intellectual property, as well as the protection thereof;

(e) the borrowing of funds from local financial institutions, as well as the purchase, sale and issue of shares and other securities in the local financial markets, and the purchase of foreign exchange for the operation of the investments.

7. The term 'freely convertible currency' shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

8. The term 'without delay' shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

Article 2

Promotion of Investments

1. Each Contracting State shall in its territory and in accordance with its applicable laws and regulations promote and admit investments and associated activities by investors of the other Contracting State.

2. Each Contracting State shall in its territory endeavour to take and enforce the necessary measures as may be applicable for granting of appropriate facilities, incentives and other forms of promotion for investments and associated activities made by investors of the other Contracting State.

3. Investors of one Contracting State shall be entitled to apply to the competent authorities in the other Contracting State for the appropriate facilities, incentives and other forms of promotion and those authorities shall grant such investors all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as may be determined by the laws and regulations of that Contracting State.

4. The Contracting States may consult with each other in any manner they may deem appropriate to encourage and facilitate investment opportunities within their respective territories.

5. Investors of either Contracting State shall be permitted to engage top managerial and technical personnel of their choice regardless of nationality, and each Contracting State shall in this respect make available all necessary facilities to the extent permitted by its laws and regulations. Each Contracting State shall, subject to its laws and regulations relating to the entry, stay and work of a natural person, examine in good faith and give sympathetic consideration to requests by investors of the other Contracting State and key personnel

who are employed by such investors including family members, to enter, leave and remain temporarily in its territory for the purpose of carrying out activities connected with the making or the management, maintenance, use, enjoyment or disposal of an investment.

6. Whenever goods or persons connected with an investment are to be transported, each Contracting State shall to the extent permissible under its relevant laws and regulations permit the operation of such transport by enterprises of the other Contracting State.

Article 3

Protection of Investments

1. Investments and associated activities by investors of either Contracting State shall enjoy full protection and security in the territory of the other Contracting State in a manner consistent with international law and the provisions of this Agreement. Neither Contracting State shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment, disposal or any other associated activities of investments.

2. Each Contracting State shall make public all laws, regulations, administrative directives and procedures that pertain to or directly affect investments in its territory of investors of the other Contracting State.

3. Each Contracting State shall observe any obligation or undertaking it may have entered into with regard to investments in its territory by investors of the other Contracting State.

4. Once established, investments shall not be subjected in the host Contracting State to additional performance requirements which may hinder or restrict their expansion or maintenance or adversely affect or be considered as detrimental to their viability, unless such requirements are deemed vital for reasons of public order or public health and are in accordance with applicable international standards.

5. Each Contracting State recognizes that in order to maintain a favourable environment for investments in its territory by investors of the other Contracting State, it shall provide effective means of asserting claims and enforcing rights with respect to investments. Each Contracting State shall ensure to investors of the other Contracting

State, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who qualify under applicable laws and regulations for the purpose of the assertion of claims and the enforcement of rights with respect to their investments.

6. In case of liquidation of an investment, the proceeds from liquidation shall be accorded the same forms of protection and treatment as the initial investment, including those accorded by virtue of Article 6 hereunder.

7. Investments by investors of either Contracting State shall not be subjected in the host Contracting States to requisition, sequestration, confiscation or any other similar measures except under due process of law and in conformity with applicable general principles of international law and other relevant provisions of this Agreement.

Article 4

Treatment of Investments

1. Each Contracting State shall at all times ensure investments and associated activities, made in its territory by investors of the other Contracting State, fair and equitable treatment. Such treatment shall not be less favourable than that which it accords in like situations to investments and associated activities of its own investors or investors of any third state, whichever is the most favourable.

2. Each Contracting State shall accord investors of the other Contracting State, as regards compensation, transfers, management, maintenance, use, enjoyment, acquisition or disposal of their investments, and other associated activities, treatment not less favourable than that which it accords to its own investors or to investors of any third state, whichever is the most favourable.

3. However, the provisions of this Article shall not be construed so as to oblige one Contracting State to extend to the investors of the other Contracting State the benefit of any treatment, preference or privilege resulting from:

(a) any customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement or other similar international agreement, to which either of the Contracting States is or may become a party; or

(b) any international or regional agreement or other similar arrangement and any domestic legislation relating wholly or mainly to taxation.

4. Either Contracting State shall not impose on the investor of the other Contracting State mandatory measures, which require or restrict the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside the territory of the host Contracting State, or any other measures having the effect of discrimination against investments by investors of the other Contracting State in favour of investments by its own investors, unless such measures are deemed vital for reasons of public order or public health and are in accordance with applicable international standards.

Article 5

Compensation for Damage or Loss

1. When investments made by investors of either Contracting State suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting State, they shall be accorded by the latter Contracting State, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting State accords to its own investors or investors of any third state, whichever is the most favourable.

2. Without prejudice to paragraph 1, investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from:

(a) requisitioning of their property or part thereof by its forces or authorities; or

(b) destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded prompt, adequate and effective compensation for the damage or loss sustained during the period of requisitioning or as a result of the destruction of their property. Resulting payments shall be made in a freely convertible currency and be freely transferable without delay.

Article 6

Expropriation

1. (a) Investments made by investors of one Contracting State in the territory of the other Contracting State shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting State except for a public purpose related to the internal needs of that Contracting State and against prompt, adequate and effective compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with due process of law of general application.

(b) Such compensation shall amount to the actual value of the investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such compensation shall be calculated in a freely convertible currency to be choosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at the prevailing commercial market rate, however, in no event less than the prevailing LIBOR - rate of interest or equivalent, from the date of expropriation until the date of payment.

Where the above-mentioned, fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement value, appreciation, current returns, discounted cash flow value, book value and goodwill. The amount of compensation finally determined shall be promptly paid to the investor in a convertible currency and allowed to be freely transferred without delay.

2. Without prejudice to his rights under Article 9 of this Agreement, the investor affected shall have a right to prompt review, under the law of the Contracting State making the expropriation, by a judicial or other competent and independent authority of that Contracting State, of its case, including the valuation of its investment and the payment of compensation therefore, in light of the principles set out in paragraph 1.

3. For the avoidance of doubt, expropriation shall include situations where a Contracting State expropriates the assets of a company or enterprise that is incorporated or established under the laws in force in its own territory in which an investor of the other

Contracting State has an investment, including through the ownership of shares, stocks, debentures or other rights or interests.

4. The term "expropriation" shall also apply to interventions or regulatory measures by a Contracting State such as the freezing or blocking of the investment, levying of arbitrary or excessive tax on the investment, compulsory sale of all or part of the investment, or other comparable measures, that have a *de facto* confiscatory or expropriatory effect in that their effect results in depriving the investor in fact from his ownership, control or substantial benefits over his investment or which may result in loss or damage to the economic value of the investment.

5. A claim to compensation in accordance with the principles and provisions of this Article shall also exist when, as a result of an intervention by a Contracting State in any company in which investment is made by investors of the other Contracting State, the investment is impaired in substance.

Article 7

Transfer of Payments Related to Investments

1. Each Contracting State shall guarantee to investors of the other Contracting State the free transfer of payments in connection with an investment into and out of its territory, including the transfer of:

(a) the initial capital and any additional capital for the maintenance, management and development of the investment;

(b) returns;

(c) payments under a contract, including amortisation of principal and accrued interest payments made pursuant to a loan agreement;

(d) royalties and fees for the rights referred to in Article 1 Paragraph 1 (d);

(e) proceeds from the sale or liquidation of the whole or any part of the investment;

(f) earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(g) payments of compensation pursuant to Articles 5 and 6;

(h) payments referred to in Article 8; and

(i) payments arising out of the settlement of disputes.

2. Transfers of payments under paragraph 1 shall be effected without delay or restrictions and, except in the case of payments in kind, in a freely convertible currency. In case of delay in effecting the required transfers, the investor affected shall be entitled to receive interest for the period of such delay.

3. Transfers shall be made at the spot market rate of exchange prevailing on the date of transfer for the currency to be transferred. In the absence of a market for foreign exchange, the rate to be applied will be the most recent rate applied to inward investments or the exchange rate determined in accordance with the regulations of the International Monetary Fund or the most recent exchange rate for conversion of currencies into Special Drawing Rights or United States Dollars, whichever is the most favourable to the investor.

Article 8

Subrogation

1. If a Contracting State, its designated agency or a company or other enterprise constituted or incorporated in that Contracting State (the "Indemnifying Party") makes a payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting State (the "Host State"), or otherwise acquires part or all of the rights and claims of such an investment as a result of the complete or partial default of the investor, the Host State shall recognize:

(a) the assignment to the Indemnifying Party by law or by legal transaction of part or all of the rights and claims resulting from such an investment; and

(b) that the Indemnifying Party is entitled to exercise such rights and enforce such claims and shall assume all obligations related to the investment by virtue of subrogation, to the same extent as its predecessor in title or the original investor.

2. The Indemnifying Party shall be entitled in all circumstances to:

(a) the same treatment in respect of the rights and claims acquired and the obligations assumed by it by virtue of the assignment referred to in paragraph I above; and

(b) any payments received in pursuance of those rights and claims,

as the original investor was entitled to receive by virtue of this Agreement in respect of the investment concerned.

3. Without prejudice to Article 7, any payments received in local currency by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely available to the Indemnifying Party for the purpose of meeting any expenditure incurred in the territory of the Host State.

Article 9

Settlement of Disputes Between a Contracting State and an Investor

1. Disputes arising between a Contracting State and an investor of the other Contracting State in respect of an investment of the latter in the territory of the former shall, as far as possible, be settled amicably.

2. If such disputes cannot be settled within a period of six months from the date at which either party to the dispute requested amicable settlement, the dispute shall be submitted for resolution, at the choice of the investor, either:

(a) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(b) to international arbitration in accordance with the following paragraphs of this Article.

3. In the event that an investor chooses to submit the dispute for resolution to international arbitration, the investor shall further provide its consent in writing for the dispute to be submitted to:

(a) (1) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (the "Washington Convention"), if both Contracting States are parties to the Washington Convention; or

(2) The Centre, under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (the "Additional Facility Rules"), if the Contracting State of the investor or the

Contracting State to the dispute, but not both, is a party to the Washington Convention;

(b) an arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as those Rules may be modified by the parties to the dispute (the Appointing Authority referred to in Article (7) of the Rules shall be the Secretary General of the Centre); or

(c) an arbitral tribunal constituted pursuant to the arbitration rules of any arbitral institution mutually agreed between the parties to the dispute.

4. An investor, notwithstanding that it may have submitted a dispute to binding arbitration under paragraph 3, may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Contracting State that is a party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.

5. Each Contracting State hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraph 3(a) and (b) or the mutual agreement of both parties to the dispute under paragraph 3(c).

6. (a) The consent given in paragraph 5, together with the consent given under paragraph 3, shall satisfy the requirement for written agreement of the parties to a dispute for the purposes of each of, Chapter II of the Washington Convention, the Additional Facility Rules, Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the "New York Convention"), and Article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article shall, as may be mutually agreed by the parties to the dispute, be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article 1 of the New York Convention.

(c) Neither Contracting State shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

However, diplomatic protection for the purposes of this sub-paragraph (c) shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

7. An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with such rules of law as may be agreed by the parties to the dispute. In the absence of such agreement, it shall apply the law of the Contracting State party to the dispute, including its rules on conflict of laws, and such rules of international law as may be applicable.

8. An investor other than a natural person which has the nationality of a Contracting State to the dispute on the date of the consent in writing referred to in paragraph (6) and which, before a dispute between it and that Contracting State arises, is controlled by investors of the other Contracting State, shall for the purpose of submitting the dispute under paragraph 3 (a) (1) of this Article be treated in the sense of Article 25 (2) (b) of the Washington Convention as a "national of another Contracting State" and shall for the purpose of article 1(6) of the Additional Facility Rules be treated as a "national of another State".

9. The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting State shall carry out without delay any such award and shall make provision for the effective enforcement in its territory of such awards.

10. In any proceedings, judicial, arbitral or otherwise or in an enforcement of any decision or award, concerning an investment dispute between a Contracting State and an investor of the other Contracting State, a Contracting State shall not assert, as a defense, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whomsoever, whether public or private, including such other Contracting State and its subdivisions, agencies or instrumentalities.

Article 10

Settlement of Disputes Between Contracting States

1. The Contracting States shall, as far as possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or other diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channels were requested by either Contracting State and unless the Contracting States otherwise agree in writing, either Contracting State may,

by written notice to the other Contracting State, submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting State shall appoint one member, and these two members shall agree upon a national of a third state as Chairman of the arbitral tribunal to be appointed by the two Contracting States. Such members shall be appointed within two months, and such Chairman within four months, from the date on which either Contracting State has informed the other Contracting State that it intends to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph 3 above have not been complied with, either Contracting State may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting State or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting State shall be invited to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. Such decision shall be made in accordance with applicable rules of international law and shall be final and binding on both Contracting States. Each Contracting State shall bear the costs of the member of the arbitral tribunal appointed by that Contracting State, as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting States. However, the arbitral tribunal may, at its discretion, direct that a higher proportion or all of such costs be paid by one of the Contracting States. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 11

Relations between Contracting States

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

Article 12

Preservation of Rights

If the legislation of either Contracting State or obligations under international law existing at present or established hereafter between the Contracting States, in addition to this Agreement, contains a regulation, whether general or specific, entitling investments or associated activities by investors of the other Contracting State to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable to the investor prevail over this Agreement.

Article 13

Application

This Agreement shall apply to all investments, whether existing at or made after the date of its entry into force by investors of either Contracting State in the territory of the other Contracting State, but shall not apply to any investment dispute that may have arisen before its entry into force.

Article 14

Entry into Force

Each Contracting State shall notify the other through diplomatic channel that its constitutional requirements for the entry into force of this Agreement have been fulfilled, and the Agreement shall enter into force on the thirtieth day after the date of receipt of the later notification.

Article 15

Duration and Termination

1. This Agreement shall remain in force for a period of thirty (30) years and shall continue in force thereafter for similar period or periods unless, one year before the expiry of the initial or any subsequent period, either Contracting State notifies the other Contracting State in writing of its intention to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of termination of this Agreement.

In witness whereof, the respective plenipotentiaries of both Contracting States have signed this Agreement.

Done in two duplicates at Kuwait on Saturday this 29th day of Shawal 1417 H corresponding to 8th day of March 1997 in the Arabic, Croatian and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

for the State of Kuwait

H.E. Nasser A. Al-Roudan
Deputy Prime Minister,
And Minister of Finance

for the Republic of Croatia

H.E. Davor Stern
Minister of Economy